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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91211736
Party	Plaintiff Kittrich Corporation
Correspondence Address	MARK CALKINS KITTRICH CORPORATION 1585 West Mission Blvd. Pomona, CA 91766 UNITED STATES markc@kittrich.com, shawnd@kittrich.com
Submission	Motion for Default Judgment
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Date	04/22/2014
Attachments	TTAB 91211736 - Motion for Default Judgment (2).pdf(208037 bytes)

1 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
2 **TRADEMARK TRIAL AND APPEAL BOARD**

3 KITTRICH CORPORATION

4
5 Opposer

6 vs.

7 LITTLE TWIGS, LLC

8
9 Applicant.

Trademark Application

Mark: LITTLE TWIGS BABY CHILD MAMA

Serial No. 85/659719

Filed: June 23, 2012

Published: July 23, 2013

Opposition No.: 91211736

10
11 **MOTION FOR DEFAULT JUDGMENT**

12
13 COMES NOW, the Opposer, Kittrich Corporation, pursuant to 37 C.F.R. §2.106(a) and
14 Fed. R. Civ. P. 55, and moves for a default judgment against the Applicant, Little Twigs, LLC.
15 Applicant has failed to file an Answer to the Notice of Opposition during the time allowed
16 therefor.

17
18 **MEMORANDUM OF LAW**

19
20 **I. BACKGROUND.**

21 Opposer Kittrich Corporation is a consumer products company who is the owner of
22 numerous marks that are used in the promotion of the LITTLE TWIG brand, which are registered
23 on the Principal Register of the United States Patent and Trademark Office. U.S. Reg. No.
24 3,121,155 – for the standard character mark LITTLE TWIG – was registered on July 25th, 2006 in
25 IC 03 for “Cosmetics, and soaps, namely skin bathing and cleaning solutions, shampoos and
26 lotions.” Moreover, U.S. Reg. No. 3,540,114 – for the design mark LITTLE TWIG
27 NURTURING FAMILIES ORGANICALLY – was registered on December 2nd, 2008, in IC 03

1 for "Baby lotion; Baby oils; Baby Powder; Cosmetic soaps; Hair conditioners for babies;
2 Shampoos for babies; Baby shampoo; Bath lotion; Face and body lotions; Hair shampoos and
3 conditioners; Hand lotions; Liquid soaps for hands, face and body."

4 Opposer acquired ownership of the LITTLE TWIG Marks on or about December 23rd,
5 2010 by virtue of a licensing and purchasing agreement regarding the assets of Little Twig, Inc.
6 U.S. Trademark Reg. Nos. 3,121,155 for LITTLE TWIG, and 3,540,114 for LITTLE TWIG
7 NURTURING FAMILIES ORGANICALLY, were assigned to the benefit of Kittrich Corporation
8 after completion of the asset purchase agreement, and recorded with the USPTO on December
9 31st, 2012.

10 On June 23rd, 2012, Applicant filed to register the proposed design mark LITTLE TWIGS
11 BABY CHILD MAMA, Serial No. 85/659719, in IC 35 for "Retail clothing boutiques; Retail
12 furniture stores; Retail store services featuring green and eco-friendly products in the nature of
13 children[']s clothing[,] furniture, toys, and goods" claiming use in commerce as early as
14 September 1st, 2009.

15 On June 24th, 2013, Opposer timely filed its Notice of Opposition, No. 91211736, and
16 forwarded a service copy of the Notice of Opposition to the Applicant via Certified Mail to the
17 stated Correspondence Address of record in U.S. Serial No. 85/659719.

18 On July 24th, 2013, the Board mailed an Order to the Applicant stating that an Answer to
19 the Notice of Opposition was due forty (40) days after the mailing date of such Order. As forty
20 days from the Board's Order fell on Labor Day, September 2nd, 2013, the due date for Applicant's
21 filing of an Answer, therefore, was September 3rd, 2013.

22 On July 29th, 2013, the Opposer received notice from the U.S. Postal Service that the
23 Certified Mailing of the Notice of Opposition was refused by Applicant on July 26th, 2013, and
24 Opposer filed Notice of Ineffective Service with the Board on July 29th, 2013. Opposer had no
25 other information regarding the location or whereabouts of the Applicant other than the
26 Correspondent Information recited within U.S. Ser. No. 85/659719.

1 On September 4th, 2013, Opposer filed a Motion for Default Judgment with the Board.
2 [The Motion for Default Judgment was later denied on March 21st, 2014.] In an October 7th, 2013
3 Notice to the Applicant, the Board, after locating Applicant at a new address, extended until
4 November 16th, 2013 the time for the Applicant to file an Answer to the Notice of Opposition.

5 On November 19th, 2013 or November 20th, 2013, the Response, an untitled paper
6 purported to be provided by the Applicant, was received by the Board. The Response appears to
7 have been dated "November 16th, 2012" by the Applicant, bears a USPTO date of receipt stamp of
8 11-19-2013, and is listed on the US Patent and Trademark Office website with a date of
9 11/20/2013. There was no indication that the Response was delivered by "Express Mail Post
10 Office to Addressee" service of the United States Postal Service under 37 C.F.R. § 1.10, nor was
11 there any indication that the Response was sent by facsimile or provided with a certification in
12 compliance with 37 C.F.R. § 1.6.

13 On November 26th, 2013, Opposer filed a Motion, pursuant to Fed. R. Civ. P. 1(f) and
14 TBMP § 506, to strike in its entirety, the untimely, untitled document filed with the Board by the
15 Applicant on November 19th, 2013 or November 20th, 2013.

16 On March 21st, 2014, the Board granted Opposer's Motion to Strike Applicant's informal
17 answer to the Notice of Opposition as conceded, in accordance with Trademark Rule 2.127(a),
18 inasmuch as Applicant filed no opposition thereto. The Board further allowed an additional thirty
19 (30) days from the mailing date of the order to file an amended answer, pursuant to Rule 8(b) of
20 the Federal Rules of Civil Procedure, failing which the Board is disposed to issue a Notice of
21 Default. As thirty days from the Board's Order fell on Sunday, April 20th, 2014, the due date for
22 Applicants filing of an amended Answer, therefore, was April 21st, 2014. To date, despite having
23 multiple opportunities to defend itself, no Answer has been filed by Applicant in these
24 proceedings.

1 **II. DEFAULT JUDGMENT SHOULD BE ENTERED.**

2 Trademark Rule 2.106(a) provides that "If no answer is filed within the time set, the
3 opposition may be decided as in case of default." 37 C.F.R. § 2.106(a). See also Fed. R. Civ. P.
4 55. Under these rules, "the failure to answer is all that is necessary to support [default]
5 judgment." Old Grantian Co. v. William Grant & Sons Ltd., 150 USPQ 58, 60 (CCPA 1966).

6 The opposition defendant that "fails to file a timely answer is in 'default' once the due
7 date for the answer has passed." Paolo's Assocs. Ltd. v. Bondo, 21 USPQ2d 1899, 1901
8 (Comm'r Pat. 1990). In such a case, the Board may issue a Notice of Default, or alternatively, the
9 party in the position of "plaintiff" may move for entry of a default judgment. Old Grantian, 150
10 USPQ at 60.

11 Applicant has wholly failed to answer, thereby failing to answer within the time set by the
12 Board. Accordingly, a judgment of default should be entered against Applicant.

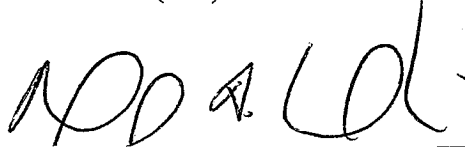
13 **III. CONCLUSION**

14 In light of the foregoing, Opposer respectfully requests that default judgment be entered
15 against Applicant in accordance with § 2.106(a) of the Trademark Rules.

16
17 Date: April 22nd, 2014

Respectfully submitted,

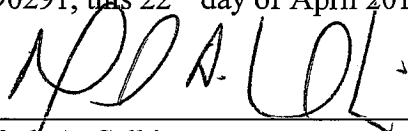
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25 

26 MARK A. CALKINS
27 Vice President
28 Kittrich Corporation
29

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion for Default Judgment is being deposited with the United States Postal Service first class certified mail, return receipt requested, postage prepaid, in an envelope addressed to the Applicant at: Lisa Julian, Little Twigs, LLC, 1317 Cabrillo Ave., Venice, California, 90291, this 22nd day of April 2014.



Mark A. Calkins